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Alex Iscoe, and David Ulmer

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BISNO DEVELOPMENT ENTERPRISE,
LLC, a limited liability company,

Plaintiff,

v.

BARRY LEVINE, an individual; ARI
SCHOTTENSTEIN, an individual;
PROTILUS INVESTORS, LLC, a New
Jersey limited liability company; ILUS
INVESTORS, LP, a California limited
liability company; RIDGEMOUNT
INVESTMENTS, INC., a Canadian
corporation; ALEX ISCOE, an individual;
DAVID ULMER, an individual; and
DOES 1 through 100, inclusive;

Defendants.

CASE NO.: 13-cv-7961-R (PJWx)

**ANSWER OF DEFENDANTS
RIDGEMOUNT INVESTMENTS,
INC., ALEX ISCOE, AND DAVID
ULMER TO COMPLAINT OF
BISNO DEVELOPMENT
ENTERPRISE, LLC**

GERSH | DERBY, LLP
ATTORNEYS AT LAW

1 Defendants Ridgemount Investments, Inc., Alex Iscoe, and David Ulmer
2 (collectively herein, "Defendants") file this Answer to the Complaint of plaintiff
3 Bisno Development Enterprise, LLC:

4 1. In response to Paragraph 1, Defendants deny that plaintiff Bisno
5 Development Enterprise, LLC ("Plaintiff") is in good standing. Defendants are
6 without knowledge or information sufficient to admit or deny the remaining
7 allegations in this paragraph.

8 2. In response to Paragraph 2, Defendants admit that Protilus Investors,
9 LLC ("Protilus") is a limited partner of Ilus LP. Defendants are without knowledge or
10 information sufficient to admit or deny the remaining allegations in this paragraph.

11 3. In response to Paragraph 3, Defendants admit that Barry Levine
12 ("Levine") is an individual, and a manager of Ilus GP; Protilus is a limited partner of
13 Ilus LP; and Ilus GP US ("Ilus GP") is the general partner of Ilus LP. Defendants are
14 informed and believe, and on that basis admit, that Levine is a principal of Protilus.
15 Defendants are without knowledge or information sufficient to admit or deny the
16 remaining allegations in this paragraph.

17 4. In response to Paragraph 4, Defendants admit that Ari Schottenstein
18 ("Schottenstein") is an individual, and that Protilus is a limited partner of Ilus LP.
19 Defendants are informed and believe, and on that basis admit, that Schottenstein is a
20 principal of Protilus. Defendants are without knowledge or information sufficient to
21 admit or deny the remaining allegations in this paragraph.

22 5. In response to Paragraph 5, Defendants admit that Ridgemount
23 Investments, Inc. ("Ridgemount") is controlled by Alex Iscoe ("Iscoe") and David
24 Ulmer ("Ulmer"). Defendants deny the remaining allegations in this paragraph.

25 6. In response to Paragraph 6, Defendants admit that Ilus LP is a California
26 limited partnership with a registered office at 1875 Century Park East, Suite 2230, Los
27 Angeles, California 90067, and a principal address of 51 Gibraltar Drive, Suite 2D,
28 Morris Plains, New Jersey 07950, and the general partner of Ilus LP is Ilus GP.

1 Defendants deny all remaining allegations in this paragraph.

2 7. In response to Paragraph 7, Defendants admit that Ilus GP is a California
3 limited liability company with a registered office at 1875 Century Park East, Suite
4 2230, Los Angeles, California 90067, and a principal address of 51 Gibraltar Drive,
5 Suite 2D, Morris Plains, New Jersey 07950. Defendants deny all remaining
6 allegations in this paragraph.

7 8. Defendants deny each and every allegation of Paragraph 8 of the
8 Complaint.

9 9. In response to Paragraph 9 of the Complaint, Defendants are without
10 knowledge or information sufficient to admit or deny the allegations contained
11 therein.

12 10. In response to Paragraph 10 of the Complaint, Defendants admit the
13 allegation.

14 11. In response to Paragraph 11 of the Complaint, Defendants are informed
15 and believe, and on that basis admit, Vineyards Development Incorporated (“VDI”) is
16 a California corporation, and VDB Santa Ana, LLC (“VDB”) is a California limited
17 liability company. Defendants are without knowledge or information sufficient to
18 admit or deny the remainder of the allegations in this paragraph.

19 12. In response to Paragraph 12 of the Complaint, Defendants admit the
20 allegations.

21 13. In response to Paragraph 13 of the Complaint, Defendants admit that
22 VDC at The Met, LLC (“VDCATM”) is governed by the Second Amended and
23 Restated Operating Agreement for VDCATM, dated August 16, 2011 (the
24 “VDCATM Operating Agreement”). As Defendants have yet to be properly served
25 with a complete copy of the Complaint, Defendants are unable to confirm or deny the
26 authenticity of the documents attached to the Complaint. Defendants deny the
27 remainder of the allegations in the paragraph.

1 14. In response to Paragraph 14 of the Complaint, Defendants admit that
2 Ulmer and Levine are managers of Ilus GP. As Defendants have yet to be properly
3 served with a complete copy of the Complaint, Defendants are unable to confirm or
4 deny the authenticity of the documents attached to the Complaint. Defendants deny
5 the remainder of the allegations in the paragraph.

6 15. In response to Paragraph 15 of the Complaint, Defendants admit the
7 existence of an Ilus GP Operating Agreement, but deny Plaintiff's interpretation of
8 this agreement as set forth in this paragraph.

9 16. In response to Paragraph 16 of the Complaint, as Defendants have yet to
10 be properly served with a complete copy of the Complaint, inclusive of Exhibit "D,"
11 Defendants are without knowledge or information sufficient to admit or deny the
12 allegations contained in Paragraph 16.

13 17. In response to Paragraph 17 of the Complaint, Defendants deny that
14 Plaintiff's definition of "Entitlements" is consistent with the definition of this term as
15 set forth in the VDCATM Operating Agreement. Defendants admit that certain
16 governmental entities supported conditional approvals for the construction of 271
17 apartment homes, but are without knowledge or information sufficient to admit or
18 deny Plaintiff's characterization of said conditional approvals as "rights."

19 18. In response to Paragraph 18 of the Complaint, Defendants are without
20 knowledge or information sufficient to admit or deny the allegations contained in the
21 paragraph.

22 19. In response to Paragraph 19 of the Complaint, Defendants are without
23 knowledge or information sufficient to admit or deny the allegations contained in the
24 paragraph.

25 20. In response to Paragraph 20 of the Complaint, Defendants are without
26 knowledge or information sufficient to admit or deny the allegations contained in the
27 paragraph.

1 21. In response to Paragraph 21 of the Complaint, Defendants are without
2 knowledge or information sufficient to admit or deny the allegations contained in the
3 paragraph with the exception that Defendants admit VDCATM acquired the Property
4 in March 2011 for a purchase price of \$6,100,000. Furthermore, as Defendants have
5 yet to be properly served with a complete copy of the Complaint, inclusive of Exhibit
6 “E,” Defendants are without knowledge or information sufficient to admit or deny any
7 factual allegations regarding that document.

8 22. Defendants deny each and every allegation in Paragraph 22 of the
9 Complaint, with the exception that Defendants admit VDCATM and Plaintiff entered
10 into an “Independent Contractor Agreement” in or about August 2011.

11 23. Defendants deny each and every allegation of Paragraph 23 of the
12 Complaint.

13 24. Defendants deny each and every allegation of Paragraph 24 of the
14 Complaint, with the exception that Defendants admit the Property was sold on or
15 about October 3, 2013 for a gross sale price (before fees, costs, and expenses) of
16 \$17,250,000.

17 25. In response to Paragraph 25 of the Complaint, Defendants deny the
18 allegations, with the exceptions that Defendants admit that Ilus LP contributed capital
19 in excess of \$2,246,000; as Defendants have yet to be properly served with a complete
20 copy of the Complaint, Defendants are unable to confirm or deny the authenticity of
21 the documents attached to the Complaint; and Defendants are without knowledge or
22 information sufficient to admit or deny the amount of Ilus LP’s “Outstanding Capital
23 Contribution” because this is not a defined term.

24 26. In response to Paragraph 26, Defendants admit that the VDCATM
25 Operating Agreement was negotiated between April 2011 and August 16, 2011, and
26 that during that time period, Defendants contemplated making Capital Contributions
27 of \$2,100,000. Defendants otherwise deny the allegations contained in this paragraph.
28 Furthermore, as Defendants have yet to be properly served with a complete copy of

1 the Complaint, inclusive of Exhibit "I," Defendants are without knowledge or
2 information sufficient to admit or deny any factual allegations regarding that
3 document.

4 27. Defendants deny each and every allegation in Paragraph 27 of the
5 Complaint, with the exception that Defendants admit that Ilus LP represented that it
6 would make Capital Contributions to VDCATM of \$2,100,000.

7 28. In response to Paragraph 28 of the Complaint, Defendants admit that
8 Iscoe and Ulmer were introduced to Ogulnick after March 6, 2011. Defendants are
9 without knowledge or information sufficient to admit or deny the remaining
10 allegations in this paragraph, and on that basis deny such allegations.

11 29. Defendants are without knowledge or information sufficient to admit or
12 deny the allegations in Paragraph 29, including the timing or content of any telephone
13 calls between Schottenstein, Levine, and Ogulnick, and anything Ogulnick may have
14 reported to Plaintiff, and on that basis deny such allegations.

15 30. Defendants deny each and every allegation in Paragraph 30 of the
16 Complaint, with the exception that Defendants admit that Schottenstein emailed a
17 non-binding proposed term sheet in March 2011.

18 31. Defendants deny each and every allegation in Paragraph 31 of the
19 Complaint, with the exception that Defendants admit that Ogulnick signed the term
20 sheet and wired a \$20,000 expense deposit. Furthermore, as Defendants have yet to
21 be properly served with a complete copy of the Complaint, inclusive of Exhibit "H,"
22 Defendants are without knowledge or information sufficient to admit or deny any
23 factual allegations regarding that document, including its authenticity.

24 32. Defendants deny each and every allegation in Paragraph 32 of the
25 Complaint, with the exceptions that Defendants admit that Ogulnick requested proof
26 of funds; Ridgemount provided proof of funds on deposit at a Canadian bank; legal
27 counsel in California was hired to draft documentation for a potential investment with
28 a scheduled closing on or about March 31, 2011; and Defendants were introduced to

1 Plaintiff in or about March 2011.

2 33. Defendants deny each and every allegation in Paragraph 33 of the
3 Complaint.

4 34. Defendants deny each and every allegation in Paragraph 34 of the
5 Complaint, with the exception that Defendants admit that the non-binding term sheet
6 signed by Ogulnick contained a "No-Shop" clause.

7 35. Defendants deny each and every allegation in Paragraph 35 of the
8 Complaint, with the exceptions that Defendants admit that the Effective Date of the
9 VDCATM Operating Agreement is August 16, 2011, and that VDI entered into the
10 VDCATM Operating Agreement.

11 36. Defendants deny each and every allegation in Paragraph 36 of the
12 Complaint, with the exceptions that Defendants admit Section 4.1.1 states: "Prior to
13 the Effective Date, Ilus made a Capital Contribution in the amount of \$2,651,173.83
14 plus the amount of other Project Costs incurred by Ilus for which Ilus has not received
15 reimbursement. On the Effective Date, a distribution shall be made to Ilus to reduce
16 the amount of its outstanding Capital Contributions to \$2,100,000.00;" Section
17 4.2.1(a)(i) states that Ilus LP's "Undisbursed Contribution Amount" was \$146,957.36,
18 which amount is also defined as the "Maximum Aggregate Additional Contribution;"
19 Defendants did not intend to contribute capital in excess of \$2,100,000; Ilus LP
20 maintained one of VDCATM's bank accounts; and Ilus LP caused the tax returns for
21 VDCATM to be filed.

22 37. Defendants deny each and every allegation in Paragraph 37 of the
23 Complaint, with the exception that Defendants admit Ilus LP agreed to faithfully
24 perform its obligations under the VDCATM Operating Agreement, including agreeing
25 to disburse a total of \$2,100,000.00 of Capital Contributions (which amount included
26 both the already-disbursed contribution amount of \$1,953,042.64 and the
27 "Undisbursed Contribution Amount" of \$146,957.36).

1 38. Defendants deny each and every allegation in Paragraph 38 of the
2 Complaint.

3 39. Defendants deny each and every allegation in Paragraph 39 of the
4 Complaint, with the exception that Defendants are without knowledge or information
5 sufficient to admit or deny whether non-parties VDI and/or Ogulnick secretly reported
6 anything to Plaintiff.

7 40. Defendants deny each and every allegation in Paragraph 40 of the
8 Complaint.

9 41. Defendants deny each and every allegation in Paragraph 41 of the
10 Complaint, with the exceptions that Defendant admit that it was confirmed with
11 VDI/Ogulnick on or about October 3, 2011, that Defendants remaining Undisbursed
12 Contribution Amount stood at \$28,244.94, and these amounts would be contributed to
13 VDCATM; the VDCATM Operating Agreement required that VDB disburse all
14 subsequent Project Costs from its contributed capital (with the exception of \$5,000 of
15 sundry expenses); and Defendants are without knowledge or information sufficient to
16 admit or deny whether non-party Ogulnick reported anything to Plaintiff.

17 42. Defendants deny each and every allegation in Paragraph 42 of the
18 Complaint, with the exception that Defendants admit that the VDCATM Operating
19 Agreement specified that Defendants' outstanding Capital Contributions were stated
20 to be \$2,100,000, which amount included Defendants' Undisbursed Contribution
21 Amount of \$146,957.36.

22 43. Defendants deny each and every allegation in Paragraph 43 of the
23 Complaint, with the exception that VDCATM never had knowledge of nor entered
24 into the "Entitlement Representation Agreement" (as this is defined in the Complaint)
25 between Plaintiff and non-party VDI/Ogulnick. VDCATM is specifically stated to be
26 "not a party to this Agreement."

27 44. Defendants deny each and every allegation in Paragraph 44 of the
28 Complaint, with the exception that Defendants admit a contribution of \$1,800,000

1 towards the purchase price, and another \$851,173.83 to cover funding shortfalls by
2 non-party Ogulnick, for a total contribution of \$2,651,173.83. Furthermore, as
3 Defendants have yet to be properly served with a complete copy of the Complaint,
4 inclusive of Exhibit “J,” Defendants are without knowledge or information sufficient
5 to admit or deny any factual allegations regarding that document, including its
6 authenticity.

7 45. Defendants deny each and every allegation in Paragraph 45 of the
8 Complaint.

9 46. Defendants deny each and every allegation in Paragraph 46 of the
10 Complaint, with the exception that Defendants are without knowledge or information
11 sufficient to admit or deny what non-party Ogulnick reported to Plaintiff. Defendants
12 deny, on information and belief, that “copies” of purported “misrepresentations” were
13 provided to Plaintiff.

14 47. Defendants deny each and every allegation in Paragraph 47 of the
15 Complaint, with the exception that Defendants are without knowledge or information
16 sufficient to admit or deny what non-party Ogulnick reported to Plaintiff. Defendants
17 deny, on information and belief, that “copies” of purported “misrepresentations” were
18 provided to Plaintiff.

19 48. Defendants deny each and every allegation in Paragraph 48 of the
20 Complaint, with the exception that Defendants are without knowledge or information
21 sufficient to admit or deny what non-party Ogulnick reported to Plaintiff. Defendants
22 deny, on information and belief, that “copies” of purported “misrepresentations” were
23 provided to Plaintiff.

24 49. Defendants deny each and every allegation in Paragraph 49 of the
25 Complaint, with the exception that Defendants are without knowledge or information
26 sufficient to admit or deny what non-party Ogulnick reported to Plaintiff. Defendants
27 deny, on information and belief, that “copies” of purported “misrepresentations” were
28 provided to Plaintiff.

1 50. Defendants deny each and every allegation in Paragraph 50 of the
2 Complaint.

3 51. Defendants deny each and every allegation in Paragraph 51 of the
4 Complaint, with the exception that Defendants admit an agreement to disburse
5 Defendants' Undisbursed Contribution Amount to VDCATM pursuant to written
6 "Requests for Disbursement" (as defined in the VDCATM Operating Agreement) by
7 non-party VDI, subject to, inter alia, VDI's satisfaction of the conditions precedent set
8 forth in the VDCATM Operating Agreement. Furthermore, as Defendants have yet to
9 be properly served with a complete copy of the Complaint, inclusive of Exhibit "K,"
10 Defendants are without knowledge or information sufficient to admit or deny any
11 factual allegations regarding that document, including its authenticity.

12 52. Defendants deny each and every allegation in Paragraph 52 of the
13 Complaint

14 53. Defendants deny each and every allegation in Paragraph 53 of the
15 Complaint, with the exception that Defendants admit that capital in excess of
16 \$2,100,000 was contributed and disbursed, meaning that more than the full amount of
17 Ilus LP's "Undisbursed Contribution Amount" was disbursed, and Ilus LP's
18 "Maximum Aggregate Additional Contribution" was thus satisfied. Defendants are
19 without knowledge or information sufficient to admit or deny what non-party
20 Ogulnick reported to Plaintiff. On information and belief, Defendants deny that
21 "copies" of purported "misrepresentations" were provided to Plaintiff.

22 54. Defendants deny each and every allegation in Paragraph 54 of the
23 Complaint, with the exceptions that Defendants admit an "Expense Tracking Report"
24 email to non-party Ogulnick on or about June 20 or 21, 2012 confirming Ilus LP's
25 "Total Funding Requirement" was \$2,100,000, with \$1,953,042.64 disbursed as of
26 that date, and a \$146,957.36 "Residual Funding Requirement;" and "VDC Expenses /
27 Invoicing Tracking List" emails to non-party Ogulnick, including on or about July 18
28 or 19, 2011 and October 3, 2011. Defendants are presently without knowledge or

1 information sufficient to admit or deny whether non-party Ogulnick was sent other
2 “Expense Tracker” reports on the other dates alleged by Plaintiff.

3 55. Defendants deny each and every allegation in Paragraph 55 of the
4 Complaint, with the exception that Defendants admit that the VDCATM Operating
5 Agreement recites that Ilus LP’s outstanding Capital Contributions as of the Effective
6 Date was \$2,100,000, of which \$146,957.36 (the “Undisbursed Contribution
7 Amount”) had yet to be disbursed.

8 56. Defendants deny each and every allegation in Paragraph 56 of the
9 Complaint, with the exception that Defendants are without knowledge or information
10 sufficient to admit or deny whether non-party Ogulnick secretly forwarded any
11 “information” to Plaintiff.

12 57. Defendants deny each and every allegation in Paragraph 57 of the
13 Complaint.

14 58. Defendants deny each and every allegation in Paragraph 58 of the
15 Complaint.

16 59. Defendants deny each and every allegation in Paragraph 59 of the
17 Complaint.

18 60. Defendants deny each and every allegation in Paragraph 60 of the
19 Complaint, with the exception that Defendants had no knowledge of, and were not
20 parties to, the “Entitlement Representation Agreement” referred to by Plaintiff, and
21 Defendants are without knowledge or information of the purported “representations or
22 warranties” provided by Defendants to Plaintiff, and on that basis are without
23 sufficient knowledge or information to admit or deny what Plaintiff would have or
24 would not have done.

25 61. Defendants deny each and every allegation in Paragraph 61 of the
26 Complaint.

27 62. Defendants deny each and every allegation in Paragraph 62 of the
28 Complaint.

1 63. Defendants deny each and every allegation in Paragraph 63 of the
2 Complaint. Defendants are without knowledge or information of any other litigation
3 involving Defendants in which Plaintiff is a party, and Defendants are without
4 knowledge or information sufficient to admit or deny what Plaintiff has or has not
5 “seen” in connection with other lawsuits involving Defendants. Defendants further
6 deny Plaintiff may “reserve rights” or attempt to “reserve rights” in light of Plaintiff’s
7 suspended status.

8 64. Defendants deny each and every allegation in Paragraph 64 of the
9 Complaint, including all conclusory legal contentions, with the exceptions that
10 Defendants admit that the Effective Date of the VDCATM Operating Agreement is
11 August 16, 2011; the VDCATM Operating Agreement recites Ilus LP’s outstanding
12 Capital Contributions as of the Effective Date are \$2,100,000; in excess of
13 \$1,967,682.81 was contributed by Ilus LP; Defendants were provided with an
14 Assignment dated August 22, 2011 between non-party “Vineyard Development
15 Corporation” and non-party VDB; June 21, 2011 is “prior to the ICA” and prior to the
16 Effective Date of the Operating Agreement; Defendants sent an “Expenses / Invoicing
17 Tracking List” on or about July 18 or 19, 2011 and September 7, 2011; and
18 Defendants sent an updated “Expenses / Invoicing Tracking List” on or about October
19 3, 2011. Defendants are without knowledge or information sufficient to admit or deny
20 whether VDI agreed to assign its interest in VDCATM to VDB on or about August
21 22, 2011, the dates on which purported emails by Defendants stating that exactly
22 \$1,967,682.81 in capital contributions had been disbursed; whether or not non-party
23 Ogulnick secretly reported anything to Plaintiff; and whether or not Plaintiff relied on
24 such purported reports by non-party Ogulnick.

25 65. Defendants deny each and every allegation in Paragraph 65 of the
26 Complaint, with the exception that Defendants admit contributions and disbursements
27 in excess of \$2,096,000. Defendants are without knowledge or information sufficient
28 to determine what, if anything, non-party Ogulnick reported to Plaintiff, and are

1 presently without knowledge or information sufficient to determine what was posted,
2 if anything, to Dropbox on October 9, 2011. On information and belief, Defendants
3 deny that “copies” of purported “misrepresentations” were provided to Plaintiff.

4 66. Defendants deny each and every allegation in Paragraph 66 of the
5 Complaint, with the exception that Defendants admit contributions and disbursements
6 in excess of \$2,096,059. Defendants are without knowledge or information sufficient
7 to determine what, if anything, non-party Ogulnick reported to Plaintiff, and are
8 presently without knowledge or information sufficient to determine what was posted,
9 if anything, to Dropbox on October 3, 2011. On information and belief, Defendants
10 deny that “copies” of purported “misrepresentations” were provided to Plaintiff.

11 67. Defendants deny each and every allegation in Paragraph 67 of the
12 Complaint, with the exception that Defendants admit contributions and disbursements
13 in excess of \$2,096,059. Defendants are without knowledge or information sufficient
14 to determine what, if anything, non-party Ogulnick reported to Plaintiff, and what was
15 sent by Levine to non-party Ogulnick on or about October 20, 2011. On information
16 and belief, Defendants deny that “copies” of purported “misrepresentations” were
17 provided to Plaintiff.

18 68. Defendants deny each and every allegation in Paragraph 68 of the
19 Complaint, with the exception that Defendants admit contributions and disbursements
20 in excess of \$2,096,059. Defendants are without knowledge or information sufficient
21 to determine what, if anything, non-party Ogulnick reported to Plaintiff, and are
22 presently without knowledge or information sufficient to determine what was posted,
23 if anything, to Dropbox on November 9, 2011. On information and belief, Defendants
24 deny that “copies” of purported “misrepresentations” were provided to Plaintiff.

25 69. Defendants deny each and every allegation in Paragraph 69 of the
26 Complaint, with the exception that Defendants admit contributions and disbursements
27 in excess of \$2,096,059.25. Defendants are without knowledge or information
28 sufficient to determine what, if anything, non-party Ogulnick reported to Plaintiff, and

1 are presently without knowledge or information sufficient to determine what was
2 posted, if anything, to Dropbox on November 29, 2011. On information and belief,
3 Defendants deny that “copies” of purported “misrepresentations” were provided to
4 Plaintiff or that non-party Ogulnick is a “Plaintiff” in the instant action.

5 70. Defendants deny each and every allegation in Paragraph 70 of the
6 Complaint, with the exception that Defendants admit contributions and disbursements
7 in excess of \$2,096,056.00. Defendants are without knowledge or information
8 sufficient to determine what, if anything, non-party Ogulnick reported to Plaintiff, and
9 are presently without knowledge or information sufficient to determine what was
10 posted, if anything, to Dropbox on March 7, 2012. On information and belief,
11 Defendants deny that “copies” of purported “misrepresentations” were provided to
12 Plaintiff.

13 71. Defendants deny each and every allegation in Paragraph 71 of the
14 Complaint, with the exception that Defendants admit that VDB sued certain of the
15 parties to this lawsuit on or about May 4, 2012; May 30, 2012 was after the
16 commencement of said litigation; and Defendants contributed and disbursed in excess
17 of \$2,096,056.00. Defendants are without knowledge or information sufficient to
18 determine what, if anything, non-party Ogulnick reported to Plaintiff. On information
19 and belief, Defendants deny that “copies” of purported “misrepresentations” were
20 provided to Plaintiff.

21 72. Defendants deny each and every allegation in Paragraph 72 of the
22 Complaint, with the exception that Defendants admit that VDB sued certain of the
23 parties to this lawsuit on or about May 4, 2012.

24 73. Defendants deny each and every allegation in Paragraph 73 of the
25 Complaint.

26 74. Defendants deny each and every allegation in Paragraph 74 of the
27 Complaint.

1 75. Defendants deny each and every allegation in Paragraph 75 of the
2 Complaint.

3 76. Defendants deny each and every allegation in Paragraph 76 of the
4 Complaint, with the exception that a 2011 federal tax return was filed for VDCATM.

5 77. Defendants deny each and every allegation in Paragraph 77 of the
6 Complaint, with the exception that Defendants are without knowledge or information
7 sufficient to admit or deny the allegations regarding the conduct of Levine in another
8 lawsuit.

9 78. Defendants deny each and every allegation in Paragraph 78 of the
10 Complaint, with the exception that Defendants are without knowledge or information
11 sufficient to admit or deny the allegations regarding the conduct of Levine in another
12 lawsuit.

13 79. Defendants deny each and every allegation in Paragraph 79 of the
14 Complaint, with the exception that a notice of default was sent to non-party VDI/VDB
15 on or about March 9, 2012, and \$990,000 was thereafter wired to the Avalon Lender
16 to extend the maturity date of the Avalon Loan.

17 80. Defendants deny each and every allegation in Paragraph 80 of the
18 Complaint, with the exceptions that Defendants are without knowledge or information
19 sufficient to admit or deny whether Plaintiff has any contract rights in connection with
20 the unsigned Entitlement Representation Agreement between Plaintiff and non-party
21 VDB; whether or not non-party VDB has incurred hundreds of thousands of dollars in
22 legal fees and costs; or the theory under which such legal fees purportedly incurred by
23 non-party VDB have caused damage to Plaintiff.

24 81. Defendants deny each and every allegation in Paragraph 81 of the
25 Complaint.

26 82. Defendants deny each and every allegation in Paragraph 82 of the
27 Complaint, with the exception that Defendants are without knowledge or information
28 sufficient to admit or deny the allegations regarding alleged communications between

Messrs. Schottenstein and Levine, on the one hand, and Mr. Heffernan, on the other hand, and deny these allegations on that basis.

83. Defendants deny each and every allegation in Paragraph 83 of the Complaint, with the exception that Defendants are without knowledge or information sufficient to admit or deny whether any of the other defendants to this lawsuit are currently soliciting investors or partners.

**RICO CASE STATEMENT INFORMATION: RENUMBERED AS
PARAGRAPHS 1 -16**

This section adds no factual allegations, but rather presents conclusory legal positions. As such, Defendants generally deny the contentions and allegations of this misnumbered section.

FIRST CAUSE OF ACTION

80. [The First Cause of Action erroneously begins with “Paragraph 80” of the Complaint. Plaintiff’s erroneous numbering is employed here, for clarity’s sake.] Defendants repeat, re-allege and incorporate herein by this reference each and every answer and allegation set forth in paragraphs 1 through [83] above, inclusive, as though fully set forth here.

81. Defendants deny each and every allegation in Paragraph 81 of the Complaint.

82. Defendants deny each and every allegation in Paragraph 82 of the Complaint.

83. Defendants deny each and every allegation in Paragraph 83 of the Complaint.

84. Defendants deny each and every allegation in Paragraph 84 of the Complaint.

85. Defendants deny each and every allegation in Paragraph 85 of the Complaint.

1 86. Defendants deny each and every allegation in Paragraph 86 of the
2 Complaint.

3 87. Defendants deny each and every allegation in Paragraph 87 of the
4 Complaint.

5 **SECOND CAUSE OF ACTION**

6 88. Defendants repeat, re-allege and incorporate herein by this reference each
7 and every answer and allegation set forth in paragraphs 1 through 87 above, inclusive,
8 as though fully set forth at this place.

9 89. Defendants deny each and every allegation in Paragraph 89 of the
10 Complaint.

11 90. Defendants deny each and every allegation in Paragraph 90 of the
12 Complaint.

13 91. Defendants deny each and every allegation in Paragraph 91 of the
14 Complaint.

15 92. Defendants deny each and every allegation in Paragraph 92 of the
16 Complaint.

17 93. Defendants deny each and every allegation in Paragraph 93 of the
18 Complaint.

19 94. Defendants deny each and every allegation in Paragraph 94 of the
20 Complaint.

21 95. Defendants deny each and every allegation in Paragraph 95 of the
22 Complaint.

23 **THIRD CAUSE OF ACTION**

24 96. Defendants repeat, re-allege and incorporate herein by this reference each
25 and every answer and allegation set forth in paragraphs 1 through 95 above, inclusive,
26 as though fully set forth at this place.

27 97. Defendants deny each and every allegation in Paragraph 97 of the
28 Complaint.

1 98. Defendants deny each and every allegation in Paragraph 98 of the
2 Complaint.

3 99. Defendants deny each and every allegation in Paragraph 99 of the
4 Complaint.

5 100. Defendants deny each and every allegation in Paragraph 100 of the
6 Complaint, with the exception that Defendants are without knowledge or information
7 sufficient to admit or deny whether or not Plaintiff performed, or intended to perform,
8 under the unsigned "Entitlement Representation Agreement" between Plaintiff and
9 non-party VDI/Ogulnick because such purported agreement was never discussed with
10 or disclosed to Defendants, nor are Defendants party to any such agreement.

11 101. Defendants deny each and every allegation in Paragraph 101 of the
12 Complaint.

13 102. Defendants deny each and every allegation in Paragraph 102 of the
14 Complaint.

15 **FOURTH CAUSE OF ACTION**

16 103. Defendants repeat, re-allege and incorporate herein by this reference each
17 and every answer and allegation set forth in paragraphs 1 through 102 above,
18 inclusive, as though fully set forth at this place.

19 104. Defendants deny each and every allegation in Paragraph 104 of the
20 Complaint, with the exception that the Property in question was sold on or about
21 October 3, 2013 for a gross sale price (before fees, costs, and expenses) of
22 \$17,250,000.

23 105. Defendants deny each and every allegation in Paragraph 105 of the
24 Complaint, with the exception that Defendants are without knowledge or information
25 sufficient to admit or deny whether or not Plaintiff performed, or intended to perform,
26 under the unsigned "Entitlement Representation Agreement" between Plaintiff and
27 non-party VDI/Ogulnick because such purported agreement was never discussed with
28 or disclosed to Defendants, nor are Defendants party to any such agreement.

FIFTH CAUSE OF ACTION

106. Defendants repeat, re-allege and incorporate herein by this reference each and every answer and allegation set forth in paragraphs 1 through 105 above, inclusive, as though fully set forth at this place.

107. Defendants deny each and every allegation in Paragraph 107 of the Complaint, with the exception that Defendants are without knowledge or information sufficient to admit or deny Plaintiff's unsupported conclusions of law.

105. [Plaintiff again uses erroneous numbering here for the Complaint's paragraphs. This paragraph should be "Paragraph 108," if the numbering continued consecutively.] Defendants deny each and every allegation in Paragraph 105 of the Complaint.

SIXTH CAUSE OF ACTION

106. Defendants repeat, re-allege and incorporate herein by this reference each and every answer and allegation set forth in paragraphs 1 through [108] above, inclusive, as though fully set forth at this place.

107. Defendants deny each and every allegation in Paragraph 107 of the Complaint, with the exception that Defendants are without knowledge or information sufficient to admit or deny whether or not Plaintiff entered into, or intended to enter into, the unsigned "Entitlement Representation Agreement" between Plaintiff and non-party VDI/Ogulnick because such purported agreement was never discussed with or disclosed to Defendants, nor are Defendants party to any such agreement.

108. Defendants deny each and every allegation in Paragraph 108 of the Complaint, with the exception that Defendants are without knowledge or information sufficient to admit or deny whether or not Plaintiff performed under, or intended to perform under, the unsigned "Entitlement Representation Agreement" between Plaintiff and non-party VDI/Ogulnick because such purported agreement was never discussed with or disclosed to Defendants, nor are Defendants party to any such agreement.

1 109. Defendants deny each and every allegation in Paragraph 109 of the
2 Complaint, with the exception that Defendants are without knowledge or information
3 sufficient to admit or deny whether or not Plaintiff has any contract rights, or intended
4 to obtain contract rights, the unsigned "Entitlement Representation Agreement"
5 between Plaintiff and non-party VDI/Ogulnick because such purported agreement was
6 never discussed with or disclosed to Defendants, nor are Defendants party to any such
7 agreement.

8 110. Defendants deny each and every allegation in Paragraph 110 of the
9 Complaint.

10 **SEVENTH CAUSE OF ACTION**

11 111. Defendants repeat, re-allege and incorporate herein by this reference each
12 and every answer and allegation set forth in paragraphs 1 through 110 above,
13 inclusive, as though fully set forth at this place.

14 112. Defendants deny each and every allegation in Paragraph 112 of the
15 Complaint.

16 113. Defendants deny each and every allegation in Paragraph 113 of the
17 Complaint, with the exception that Defendants are without knowledge or information
18 sufficient to admit or deny whether or not Plaintiff performed under, or intended to
19 perform under, the unsigned "Entitlement Representation Agreement" between
20 Plaintiff and non-party VDI/Ogulnick because such purported agreement was never
21 discussed with or disclosed to Defendants, nor are Defendants party to any such
22 agreement.

23 114. Defendants deny each and every allegation in Paragraph 114 of the
24 Complaint, with the exception that Defendants are without knowledge or information
25 sufficient to admit or deny whether or not Plaintiff has any contract rights, or intended
26 to obtain contract rights, the unsigned "Entitlement Representation Agreement"
27 between Plaintiff and non-party VDI/Ogulnick because such purported agreement was
28 never discussed with or disclosed to Defendants, nor are Defendants party to any such

1 agreement.

2 115. Defendants deny each and every allegation in Paragraph 115 of the
3 Complaint.

4 **EIGHTH CAUSE OF ACTION**

5 116. Defendants repeat, re-allege and incorporate herein by this reference each
6 and every answer and allegation set forth in paragraphs 1 through 115 above,
7 inclusive, as though fully set forth at this place.

8 117. Defendants deny each and every allegation in Paragraph 117 of the
9 Complaint, and this paragraph's conclusory statements of law.

10 118 – 137. This section adds no factual allegations, but rather presents
11 conclusory legal positions. As such, Defendants generally deny the contentions and
12 allegations of paragraphs 118 through 137.

13 **SEVENTH [sic] CAUSE OF ACTION**

14 138. Defendants repeat, re-allege and incorporate herein by this reference
15 each and every answer and allegation set forth in paragraphs 1 through 137 above,
16 inclusive, as though fully set forth at this place.

17 139. Defendants deny each and every allegation in Paragraph 139 of the
18 Complaint.

19 140. Defendants deny each and every allegation in Paragraph 140 of the
20 Complaint.

21 141. Defendants deny each and every allegation in Paragraph 141 of the
22 Complaint.

23 142. Defendants deny each and every allegation in Paragraph 142 of the
24 Complaint.

25 **PLAINTIFF'S PRAYER FOR JUDGMENT**

26 **First Cause of Action**

27 Defendants deny Plaintiff's right to the relief requested.
28

Second Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Third Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Fourth Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Fifth Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Sixth Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Seventh Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Eighth Cause of Action

Defendants deny Plaintiff's right to the relief requested.

Ninth Cause of Action

[incorrectly referred to, also, as the Seventh Cause of Action in the Complaint].

Defendants deny Plaintiff's right to the relief requested.

AFFIRMATIVE DEFENSES AS TO ALL CAUSES OF ACTION

FIRST AFFIRMATIVE DEFENSE

Failure to Allege With Particularity

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff has not set out its causes of action and allegations with sufficient particularity to permit Defendants to raise all appropriate defenses, and thus, Defendants reserve their right to add additional defenses to the factual bases for Plaintiff's alleged causes of action and allegations.

SECOND AFFIRMATIVE DEFENSE

Uncertainty

Subject in all respects to the Reservations of Rights set forth herein, the Complaint and each of the alleged causes of action therein presented are vague, ambiguous, and uncertain.

THIRD AFFIRMATIVE DEFENSE

Lack of Reliance

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff has not relied upon any acts, representations whether true or untrue, on the part of Defendants, nor have Defendants been involved in any concealment, omission, fraud, or negligence.

FOURTH AFFIRMATIVE DEFENSE

Failure to State Cause of Action

Subject in all respects to the Reservations of Rights set forth herein, the Complaint, and each of the alleged causes of action in it, fails to state a cause of action upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE

Fraud

Subject in all respects to the Reservations of Rights set forth herein, the Complaint, and each of the alleged causes of action in it, fails due to fraud.

SIXTH AFFIRMATIVE DEFENSE

Consent

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action by reason of the fact that it willingly and voluntarily consented, expressly and implicitly, to any such acts or conduct as may be shown on the part of these answering Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Offset

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff's claims, if any, are subject to an offset for Plaintiff's debts to Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Apportionment of Fault

Subject in all respects to the Reservations of Rights set forth herein, Defendants deny causing any harm or damage to Plaintiff. However, to the extent that Defendants committed any acts which caused Plaintiff any harm or damage, which Defendants vigorously deny, the liability of Defendants should be apportioned according to their respective degree of fault, and the liability, if any, of these answering Defendants should be reduced accordingly.

NINTH AFFIRMATIVE DEFENSE

Ratification

Subject in all respects to the Reservations of Rights set forth herein, these answering Defendants deny causing any harm or damage to Plaintiff. However, to the extent that these answering Defendants committed any acts which caused Plaintiff any harm or damage, which the answering Defendants vigorously deny, all said acts and conduct of the answering Defendants and any consequences thereof, or resulting therefrom, were ratified and accepted by Plaintiff.

TENTH AFFIRMATIVE DEFENSE

Estoppel

Subject in all respects to the Reservations of Rights set forth herein, as a result of the acts, conduct, and omissions of Plaintiff and its agents, the alleged causes of action presented in the Complaint are barred by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Waiver

Subject in all respects to the Reservations of Rights set forth herein, by their acts and conduct, Plaintiff waived its right, if the right ever existed, to assert any claim or cause of action against these answering Defendants.

TWELFTH AFFIRMATIVE DEFENSE

Laches

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff has unreasonably delayed the commencement of this action to the prejudice of Defendants, whereby the Complaint and each of the alleged causes of action therein presented, are barred by the doctrine of laches.

THIRTEENTH AFFIRMATIVE DEFENSE

Mitigation of Damages

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff failed to take all reasonable steps necessary to mitigate damages, if any, thereby barring or reducing recovery accordingly.

FOURTEENTH AFFIRMATIVE DEFENSE

Justification

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action by reason of the fact that each and every act of these answering Defendants was justified, proper, legal, fair, and not done in derogation of Plaintiff's rights or legal interests.

FIFTEENTH AFFIRMATIVE DEFENSE

Lack of Standing

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff lacks standing to assert any of the claims against these answering Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

Excuse

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action because Plaintiff's breaches of contracts and/or other wrongful conduct excuse Defendants from performing any contractual, fiduciary, or common law obligation.

SEVENTEENTH AFFIRMATIVE DEFENSE

Equitable Offset

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action because Plaintiff's allegations and causes of action are barred by the doctrine of equitable offset.

EIGHTEENTH AFFIRMATIVE DEFENSE

Lack of Causation

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action because no act or omission of these answering Defendants were a cause in fact or proximate cause of the injuries and damages, if any, sustained by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

No Basis for Punitive Damages

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action because all of Defendants' actions with regard to Plaintiff were conducted in good faith and without fraud, oppression, or malice toward Plaintiff and its rights, thereby precluding any and all claims for special, exemplary, or punitive damages.

TWENTIETH AFFIRMATIVE DEFENSE

Performance of Duties

Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is barred from any recovery in this action because Defendants have performed all

1 contractual, statutory, and other duties, if any, owed to Plaintiff, and Plaintiff is
2 therefore estopped to assert any cause of action against Defendants.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 **Implied Covenant of Good Faith and Fair Dealing**

5 Subject in all respects to the Reservations of Rights set forth herein, Plaintiff is
6 barred from any recovery in this action because Plaintiff has breached the implied
7 covenant of good faith and fair dealing.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **Unclean Hands**

10 Subject in all respects to the Reservations of Rights set forth herein, the
11 Complaint, and each of the alleged causes of action in it, fails because Plaintiff has
12 unclean hands in connection with the allegations set forth in the Complaint, which
13 bars it from any recovery from its Complaint.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 **Unjust Enrichment**

16 Subject in all respects to the Reservations of Rights set forth herein, the
17 Complaint, and each of the alleged causes of action in it, fails because the damages
18 sought by Plaintiff would unjustly enrich Plaintiff.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 **Contribution by Plaintiff's Own Acts**

21 Subject in all respects to the Reservations of Rights set forth herein, the
22 Complaint, and each of the alleged causes of action in it, fails because Plaintiff the
23 injuries and/or damages alleged in the Complaint were proximately caused by,
24 occurred, and /or were contributed to by Plaintiff's own acts or failures to act.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Contribution by Third Party Acts

Subject in all respects to the Reservations of Rights set forth herein, the Complaint, and each of the alleged causes of action in it, fails because the injuries and/or damages alleged in the Complaint were proximately caused by, occurred, and/or were contributed to by acts or failures to act by parties other than these answering Defendants.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Reservation of Additional Affirmative Defenses

Subject in all respects to the Reservations of Rights set forth herein, as a separate and affirmative defense, Defendants are informed and believe, and thereon allege, that they have insufficient knowledge or information on which to form a belief as to whether additional, as yet unstated affirmative defenses are available. These answering Defendants reserve their right to assert additional affirmative defenses in the event discovery reveals that doing so would be appropriate.

PRAAYER

WHEREFORE, Defendants pray as follows:

1. That Plaintiff takes nothing by reason of its Complaint, and that judgment be rendered in favor of Defendants;

2. That Defendants be awarded their costs of suit incurred in defense of this action; and

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3. For such other relief as the Court deems proper.

Respectfully submitted,
DATED: January 2, 2014

GERSH | DERBY, LLP
Attorneys at Law

By: 
JEFFREY F. GERSH
PAUL B. DERBY
MANE SARDARYAN
Attorneys for Defendants Ridgemount
Investments, Inc., Alex Iscoe. and David
Ulmer

GERSH | DERBY, LLP
ATTORNEYS AT LAW

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 15821 Ventura Boulevard, Suite 515, Encino, California 91436.

On January 2, 2014, I served the foregoing document described as: **ANSWER OF DEFENDANTS RIDGEMOUNT INVESTMENTS, INC., ALEX ISCOE, AND DAVID ULMER TO COMPLAINT OF BISNO DEVELOPMENT ENTERPRISE, LLC** on all interested parties to this action ☐ by placing the true copies thereof enclosed in sealed envelopes addressed ☒ as stated on the attached mailing list;

SEE ATTACHED SERVICE LIST

☐ **(BY MAIL)** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with GERSH | DERBY's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Encino, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY PERSONAL SERVICE)** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☒ **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) the foregoing document will be served by the court via NEF and hyperlink to the document. On January 2, 2014, I checked the CM/ECF docket for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated: **SEE ATTACHED**

☐ **BY E-MAIL:** I caused the above-referenced document to be transmitted via e-mail from _____ @gershderbylaw.com to _____ directed to _____.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 2, 2014, at Encino, California.


HEATHER NAPIER

**TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING
("NEF")**

rhbisno@gmail.com-Robert H. Bisno

lmosely@raineslaw.com-Laith D. Mosely

mfeldman@raineslaw.com-Miles J. Feldmen

CHAMBERS COPY VIA-ATTORNEY SERVICE

Honorable Manuel Real
United States District Court
Central District of California-Los Angeles
312 North Spring Street
Courtroom 8
Los Angeles, CA 90012

GERSH/DERBY, LLP
ATTORNEYS AT LAW